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December 26, 2009

Magistrate Judge A. Kathleen Tomlinson
United States District Court
Eastern District of New York
100 Federal Plaza, Courtroom 910
Central Islip, N.Y. 11722-9014

Re: Capone v. Goldman 09 Civ 1208 (SJF)

Dear Magistrate Judge Tomlinson:

I received this Court's Order dated December 21, 2009 on December 26, 2009. In compliance therewith, please be advised that I will be proceeding Pro Se.

I also understand my responsibility to comply with my discovery obligations. Same may be problematic however due to my incarceration and the fact that many of the pertinent records are no longer in my custody having been turned over to the US Attorney. Inmates are only allowed one (1) hour

per week in the law library. The only copier is in the law library and its not been working 2 out of the last 3 weeks.

As indicated in my initial communication, I feel compelled to appear and respond to the allegations in the complaint as Mr. Koek has taken so many liberties with the facts. For example, he continues to assert that I solicited Mr. Capone. Just not true. I didn't even know of Mr. Capone until Mr. Fox inquired if Golden was seeking additional lenders. Further, every transaction ~~involving~~ involving Capone was done through and with the knowledge of Mr. Fox, presumably to protect both Capone and his "commission."

Again, Capone was a lender, not an investor. All the documents were part of a conspiracy to allow Capone to avoid capital gains taxes.

Mr. Koek's use of the Cox affidavit also compels my

appearance. He continually asserts the Cox affidavit as gospel.

That affidavit contains numerous errors and omissions.

Further, I am compelled to address the allegations against Andrea Goldman. She had no ~~more~~ involvement whatsoever with the financial details of our company. On occasion, she did reedimentary data entry when no one else was available (and nothing, I believe involving Capone). Curiously, Fox and his associate performed such data entry when the need arose.

Lastly, why is this case here? While I fully understand Mr. Capone's anger, this case belongs with the other Goldman matter. Mr. Capone also knows by now that his only recovery will come from the assets of the bankrupt estate, assets that have been ravaged by the decline in the market. Unfortunately, he's throwing good money after bad.

I thank this Court for consideration of my request.

Respectfully,

Mark Holmes

cc: Mr. M. Cook

Mr. J. Daniels

Mr. F. Kenthaw

Ms. D. Blansky